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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,926

09/24/2003

Jean M. Beaupre

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05/24/2007

PHILIP S. JOHNSON

JOHNSON & JOHNSON

ONE JOHNSON & JOHNSON PLAZA

NEW BRUNSWICK, NJ 08933-7003

EXAMINER

CHEN, VICTORIA W

ART UNIT

PAPER NUMBER

3739

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/669,926	<b>Applicant(s)</b> BEAUPRE, JEAN M.	
	<b>Examiner</b> Victoria W. Chen	<b>Art Unit</b> 3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-14 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/2/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the combination of a first one half wave segment and second one half wave segment must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not describe in adequate detail how the two half wave segments are combined to form the ultrasonic blade. The claim itself also does not have any description as to the relative placement of the two half wave segments.

#### ***Claim Objections***

Claim 12 is objected to because of the following informalities: claim 12, ln. 8, "firth portion" should be changed to --fifth portion--. Appropriate correction is required

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-4, 6, 7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Haibel, Jr. et al. (US Pat No 6254623B1).**

Regarding claim 1, Haibel discloses an ultrasonic blade having a one-half wave segment [col. 4, ll. 64-66], a first portion [46], a second portion [half of 48], a third portion [the other half of 48], the first portion comprising a first cross-sectional area [col. 5, ll. 14-17] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 28-29].

Regarding claim 2, Haibel discloses an ultrasonic instrument comprising a housing [100], a sheath [36] joined to the housing and an ultrasonic waveguide [96], the waveguide having an end effector [98], a one-half wave segment [col. 4, ll. 64-66], a first portion [46], a second portion [half of 48], a third portion [the other half of 48], the first portion comprising a first cross-sectional area [col. 5, ll. 14-17] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 28-29].

Regarding claim 3, Haibel discloses a clamp arm [42] pivotably mounted on the distal end of the sheath [see col. 5, ll. 55-56].

Regarding claim 4, Haibel discloses the first cross-sectional area is greater than the second cross-sectional area [col. 5, ll. 29-31].

Regarding claim 6, Haibel discloses the first cross-sectional area is constant [col. 5, ll. 14-17].

Regarding claim 7, Haibel discloses the second cross-sectional area is constant [col. 5, l. 28-29].

Regarding claim 11, Haibel discloses the third portion is distal to the first portion [Fig. 1].

**Claims 1, 5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Haibel, Jr. et al. (US Pat No 6254623B1).**

Regarding claim 1, Haibel discloses an ultrasonic blade having a one-half wave segment [col. 4, ll. 64-66], a first portion [48], a second portion [half of 46], a third portion [the other half of 46], the first portion comprising a first cross-sectional area [col. 5, ll. 28-29] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 14-17].

Regarding claim 5, Haibel discloses the first cross-sectional area is less than the second cross-sectional area [col. 5, ll. 29-31].

Regarding claim 10, Haibel discloses the second portion is located proximal to the first portion [Fig. 1].

**Claims 1, 4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Haibel, Jr. et al. (US Pat No 6254623B1).**

Regarding claim 1, Haibel discloses an ultrasonic blade having a one-half wave segment [col. 4, ll. 64-66], a first portion [46], a second portion [half of 50], a third portion [the other half of 50], the first portion comprising a first cross-sectional area [col. 5, ll. 14-17] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 37-38].

Regarding claim 4, Haibel discloses the first cross-sectional area is greater than the second cross-sectional area [Fig. 1].

Regarding claim 8, Haibel discloses the second cross-sectional area is variable [col. 5, ll. 38-39].

**Claims 1, 5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Haibel, Jr. et al. (US Pat No 6254623B1).**

Regarding claim 1, Haibel discloses an ultrasonic blade having a one-half wave segment [col. 4, ll. 64-66], a first portion [48], a second portion [half of 50], a third portion [the other half of 50], the first portion comprising a first cross-sectional area [col. 5, ll. 28-29] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 37-38].

Regarding claim 5, Haibel discloses the first cross-sectional area is less than the second cross-sectional area [col. 5, ll. 29-32].

Regarding claim 9, Haibel discloses the second cross-sectional area is variable [col. 5, ll. 38-39].

***Response to Arguments***

Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

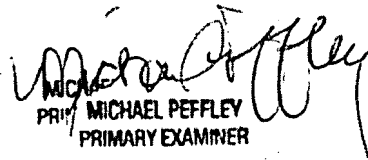
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victoria W. Chen whose telephone number is (571) 272-3356. The examiner can normally be reached on M-F 8:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VWC  
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5/16/07

  
MICHAEL PEFFLEY  
PRIMARY EXAMINER